

EXHIBIT 22

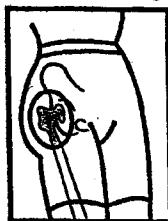


Posey® Hipsters™

Posey Hipsters feature impact absorbing, soft foam pads over the critical fracture area to help minimize potential damage, including hip fractures that can occur from a fall.

Hipsters are available in four styles:

- Standard Unisex Brief easily fits over undergarments, or can be worn as underwear.
- Incontinent Brief features a snap front for easier application over adult diapers.
- Male Fly Brief easily fits over undergarments, or can be worn as underwear.
- EZ-On Brief features a crotchless design that allows patients to wear their own undergarments. The mesh material is water permeable, allowing the EZ On Hipster to be worn during bathing.



All Hipsters are available with original foam padding, or high durability padding designed to withstand laundering in large capacity machines at higher temperature hot washing cycles.

REF 6016 Hipsters, Standard Brief

REF 6017 Hipsters, Incontinent Brief

REF 6018 Hipsters, Male Fly Brief

REF 6019 Hipsters, EZ On

REF 6008 Replacement Pads, 1 pair

REF 6016H Hipsters, High Durability Pads, Standard Brief

REF 6017H Hipsters, High Durability Pads, Incontinent Brief

REF 6018H Hipsters, High Durability Pads, Male Fly Brief

REF 6019H Hipsters, High Durability Pads, EZ On

REF 6008H Replacement High Durability Pads, 1 pair

Application Instructions:

Standard, Male Fly and Incontinent Brief Models

With the Posey label in the back, put the Hipsters on as you would a pair of shorts, sliding them gently over the hips. Adjust to assure that the foam pads are properly aligned with and cover the hip joint.

EZ On Model

1. Unfasten the hook and loop at the waist and thighs.
2. Wrap the garment around your waist. The labels should be at the back and on the inside of the waistband.
3. Fasten the hook and loop at the front of your waist. The waistband should be securely fastened to allow minimal shifting of the garment, but should not feel tight or restrictive.
4. Pull the left panel taut over the left hip and thigh. The pad should be positioned directly over the hip joint.
5. Secure the leg band around the lower thigh using the hook and loop attachment. The elastic band should be tight enough to prevent the pad from sliding out of place without restricting circulation.
6. Repeat steps 4 and 5 on the right side.

1 Center for Disease Control and Prevention, 27 Aug 2004, www.cdc.gov/ncidod/fip/Sterile/laundry.htm

J.T. Posey Company

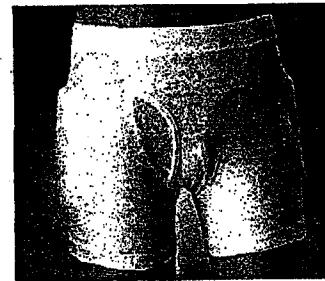
5635 Peck Road • Arcadia, CA 91006-0020 USA • Tel: 800-447-6739 or 626-443-3143 • Fax: 800-767-3933 or 626-443-5014 • www.posey.com
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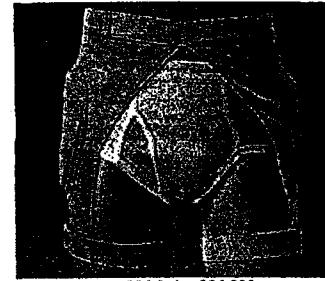
#6016 / #6016H



#6017 / #6017H



#6018 / #6018H



#6019 / #6019H

Laundering Instructions

Posey Hipster with High Durability pads are designed to withstand laundering in higher temperature hot washing cycles. Hipsters can be washed according to CDC guidelines for soiled linen. However, using the lower temperature washing and drying cycle for non-contaminated linen will prolong product life. "Studies have shown that a satisfactory reduction of microbial contamination can be achieved at water temperatures lower than 160°F if laundry chemicals suitable for lower-temperature washing are used at proper concentrations. In the home, normal washing and drying cycles including 'hot' or 'cold' cycles are adequate to ensure patient safety. Manufacturers instructions for the machine and the detergent or wash additive should be followed closely."¹

- Adhere hook and loop straps before laundering to prevent lint build-up on hook during laundry cycle. If hook and loop does not adhere due to lint, clean hook material with a stiff brush.
- If EZ On pads are removed, wipe clean with mild, liquid disinfectant before replacing in the pants.

Hipsters

120°F
50°C
WASH HOT
BLEACH AS DIRECTED
ON CONTAINER

DRY ON
MEDIUM
CL

High Durability Hipsters

160°F
52°C
WASH HOT
25 MIN.
BLEACH AS DIRECTED
ON CONTAINER

DRY ON
HIGH
CL

SIZING CHART		
Size	Waist Measurement	Hip Measurement
S	28" - 30" or 71 - 76cm	35" - 37" or 88 - 93cm
M	30" - 34" or 76 - 86cm	37" - 41" or 93 - 104cm
L	34" - 38" or 86 - 96cm	41" - 45" or 104 - 114cm
XL	38" - 42" or 96 - 106cm	45" - 49" or 114 - 124cm
XXL	42" - 46" or 106 - 116cm	49" - 53" or 124 - 134cm

EC REP

MDSS
Burchardstr. 1,
30163, Hannover, Germany
M6139 012405

CE

PC 2876

WARNING

Due to the random possibility of falls, the Posey Company makes no guarantee, express or implied, that the user is protected from hip trauma. The skin under the pants should be assessed regularly and Hipsters should be changed and washed after each incontinent episode to prevent skin breakdown.

Posey Hipsters contain foam pads that are sealed in a pouch to protect it from water. If the pouch is cut or the seal is broken during laundering, moisture will enter the pouch and may result in waterlogged foam. Waterlogged foam encased in the pouch may promote the growth of bacteria.

- Test the foam and pouch integrity by squeezing the pad in one fist, forcing the air to one end, resulting in an air bubble.
- If you hear or feel liquid or air escaping, the pouch is damaged.
- If the pouch is damaged, discontinue use and discard.

Clinical References Supporting the Use of Hip Protectors

Title: *External Hip Protectors to Prevent Osteoporotic Hip Fractures*
Author: A. Ekman, H. Mallmin, K. Michaësson, S. Ljunghall
Publication: The Lancet, volume 350, August 23, 1997

Study Objectives: Ekman and colleagues conducted a controlled study on the use of hip protection to prevent hip fractures. One expectation was to either confirm or disprove the 1993 reported findings of J.B. Lauritzen and colleagues in "Effect of external hip protectors on hip fractures."

Results: The use of hip protectors as preventative treatment for hip fractures was validated. "Our study confirms a reduced risk for hip fractures of the same magnitude as the previous report."

Recommendations: "With improved compliance, external hip protectors should be an effective prophylactic against hip fractures."

Title: *Prevention Of Hip Fracture in Elderly People*
Author: Pekka Kannus, M.D., Ph.D., et al
Publication: The New England Journal of Medicine, Vol. 343, No. 21, November 21, 2000

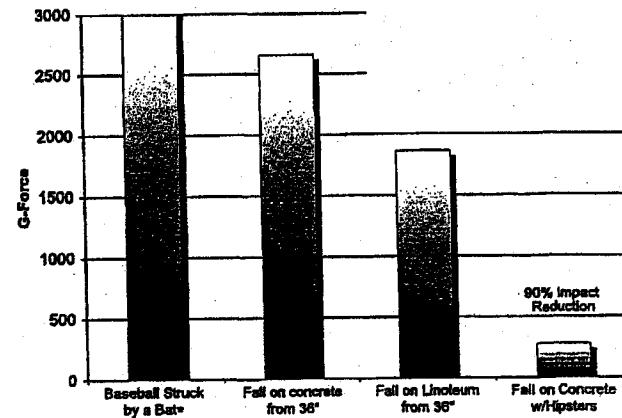
Study Objectives: The purpose of this study was "to determine whether an external hip protector would be effective in preventing hip fractures among elderly adults." The study population was comprised of elderly adults from 22 community based health-care centers in Finland; a treatment group of 653 and a control group of 1,148 participants.

Results: The degree of compliance with the hip protector was $48 \pm 29\%$. The hip protector group suffered 13 hip fractures, 9 of which occurred while not wearing the hip protector, compared to 67 hip fractures in the control group.

Recommendations: "We conclude that the risk of hip fractures can be reduced in frail elderly adults through the use of an anatomically designed external hip protectors. Only 41 persons need to use the hip protector for one year (or 8 persons, for five years) in order for one fracture to be prevented."

Posey Hipsters Proven Effective in Laboratory Test

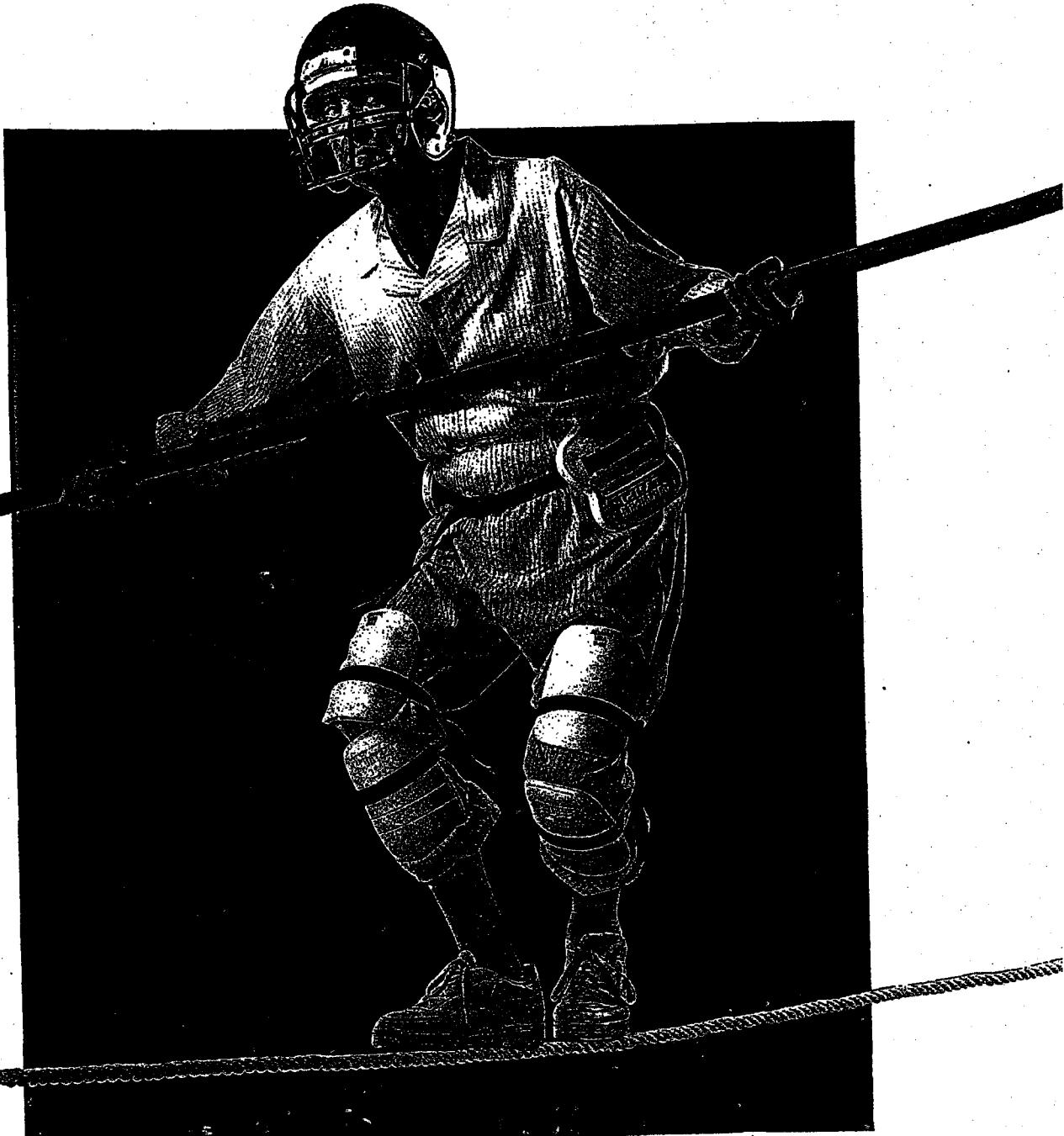
An independent laboratory study was conducted to determine the most effective impact absorbing material. A test was created that would simulate a fall causing direct impact to the greater trochanter. In this study, a weight was released in a guided drop to simulate a 120 lb. subject falling from a height of 36", or the estimated height of the hip above the floor for a typical nursing home resident. The baseline measurement of impact force was determined to be a fall directly onto concrete. The G-Force of a fall under this scenario was 2,660G's and, for purposes of comparison, is just slightly less impact force than that of a baseball being struck by a bat. In this extreme test, the low profile Posey Hipster reduced the impact force on average by 90% and showed excellent impact energy absorption.



Testing was conducted by Garwood Laboratories.
 Data on file at J.T. Posey Company *Source: www.madsci.org

EXHIBIT 23

FOR SOME RESIDENTS, EVERY FALL IS A BIG ONE



Posey®

FIRST IN FALL PREVENTION

PC 1085



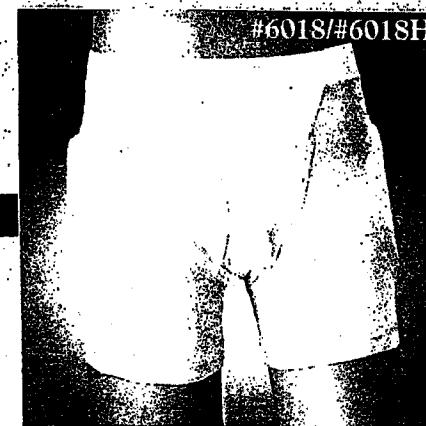
#6016H

NEW



#6017H

NEW



#6018H

NEW



#6019H

POSEY #6016 HIPSTERS STANDARD BRIEF

- Easily fits over undergarments, or can be worn as underwear.
- Unisex sizing.
- #6016H Standard Brief with high durability pads.

POSEY #6017 INCONTINENT BRIEF

- Snap front for easier application over diaper. Unisex sizing.
- #6017H Incontinent Brief with high durability pads.

POSEY #6018 MALE FLY BRIEF

- Easily fits over undergarments, or can be worn as underwear.
- Fly front for improved compliance in male residents.
- #6018H Male Fly Brief with high durability pads.

POSEY #6019 EZ-ON BRIEF

- Residents can wear their own undergarments.
- Can be worn in the shower.
- Hip pads can be removed for laundering or replacement.
- #6019H EZ-ON Brief with high durability pad.

SIZING CHART		
Size	Waist Measurement	Hip Measurement
S	28" - 30" or 71 - 76cm	35" - 37" or 88 - 93cm
M	30" - 34" or 76 - 86cm	37" - 41" or 93 - 104cm
L	34" - 38" or 86 - 96cm	41" - 45" or 104 - 114cm
XL	38" - 42" or 96 - 106cm	45" - 49" or 114 - 124cm
XXL	42" - 46" or 106 - 116cm	49" - 53" or 124 - 134cm

Posey High Durability Hipsters contain denser foam than the standard Hipsters. This increased density aids in its ability to withstand higher hot washing and drying cycles.

LAUNDERING INSTRUCTIONS:

Hipsters	120°F 50°C WASH HOT	CL BLEACH AS DIRECTED ON CONTAINER	O DRY ON MEDIUM
High Durability Hipsters	180°F 82°C WASH HOT 25 MIN.	CL BLEACH AS DIRECTED ON CONTAINER	O DRY ON HIGH



J T Posey Company
Arcadia, CA 91006 USA
Tel: 800-447-6739
www.posey.com

PC 1086

POSEY HIPSTERS HELP PROTECT AGAINST INJURY FROM FALLS



It's a long way down for residents at risk of injury from falls. You can greatly reduce that risk with Posey Hipsters. The Hipsters' high energy-absorbing foam pads are positioned precisely over the hip bones, increasing the odds of surviving a fall uninjured. The Hipsters are comfortable and slim enough to be virtually undetectable under clothing. By offering increased protection, Hipsters relieve residents' anxiety about falling and enhance their quality of life.

- **High impact-absorbing viscoelastic pads protect hip bones against injury from falls**
- **Soft, comfortable pads improve compliance versus hard-shelled products**
- **Washable to CDC standards for soiled linen without removing the pads**
- **100% latex-free**
- **Five sizes for correct fit**
- **Discreet, low-profile pads are virtually undetectable under clothing**

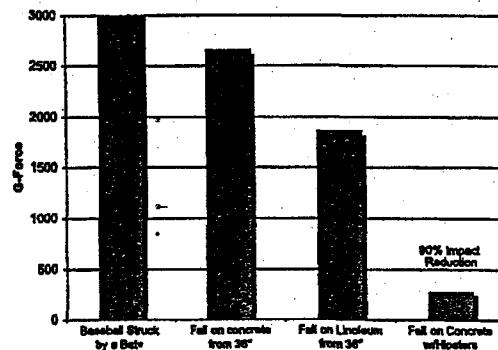


Low Profile - All styles fit discreetly under men's and women's clothing.



Posey Hipsters Proven Effective in Laboratory Test

Posey hired Garwood Laboratories to conduct testing to select a comfortable and effective impact absorbing material. A test was created that would simulate a fall causing direct impact to the greater trochanter. In this study, a weight was released in a guided drop to simulate a 120 lb. subject falling from a height of 36", or the estimated height of the hip above the floor for a typical nursing home resident. The baseline measurement of impact force was determined to be a fall directly onto concrete. The G-Force of a fall under this scenario was 2,660G's and, for purposes of comparison, is just slightly less impact force than that of a baseball being struck by a bat. In this extreme test, the low profile Posey Hipster reduced the impact force on average by 90% and showed excellent impact energy absorption.



Testing was conducted by Garwood Laboratories.
Data on file at J.T. Posey Company *Source: www.madsci.org

Special offer: 30-day no-risk free trial.
Test the Posey Hipsters for yourself with no obligation to buy.

PC 1087

Clinical References Supporting the Use of Hip Protectors

Title: *External Hip Protectors to Prevent Osteoporotic Hip Fractures*

Author: A. Ekman, H. Mallmin, K. Michaëlsson, S. Ljunghall

Publication: The Lancet, volume 350, August 23, 1997

Study Objectives: Ekman and colleagues conducted a controlled study on the use of hip protection to prevent hip fractures. One expectation was to either confirm or disprove the 1993 reported findings of J.B. Lauritzen and colleagues in "Effect of external hip protectors on hip fractures."

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Recommendations: "With improved compliance, external hip protectors should be an effective prophylactic against hip fractures."

Title: *Prevention Of Hip Fracture in Elderly People*

Author: Pekka Kannus, M.D., Ph.D., et al

Publication: The New England Journal of Medicine, Vol. 343, No. 21, November 21, 2000

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Results: The degree of compliance with the hip protector was $48 \pm 29\%$. The hip protector group suffered 13 hip fractures, 9 of which occurred while not wearing the hip protector, compared to 67 hip fractures in the control group.

Recommendations: "We conclude that the risk of hip fractures can be reduced in frail elderly adults through the use of an anatomically designed external hip protector. Only 41 persons need to use the hip protectors for one year (or 8 persons, for five years) in order for one fracture to be prevented."

Posey Hipsters can be washed according to CDC guidelines for soiled linen. Hipsters with high durability pads are designed to withstand laundering in large capacity machines at higher temperature hot (180°) washing and high temperature drying cycles.

Due to the random possibility of falls, the Posey Company makes no guarantee, express or implied, that the user is protected from hip trauma.

Please detach and fax to 1-626-443-5014, or call us at 1-800-44-POSEY to start your trial.

yes!

I want to take advantage of your 30-day trial offer. Please have a representative call me to discuss Posey Hipsters.



Name	<hr/>		
Title	<hr/>		
Institution	<hr/>		
Address	<hr/>		
City	State	Zip	<hr/>
Telephone ()	Best time to call		am pm

Fax or mail to:

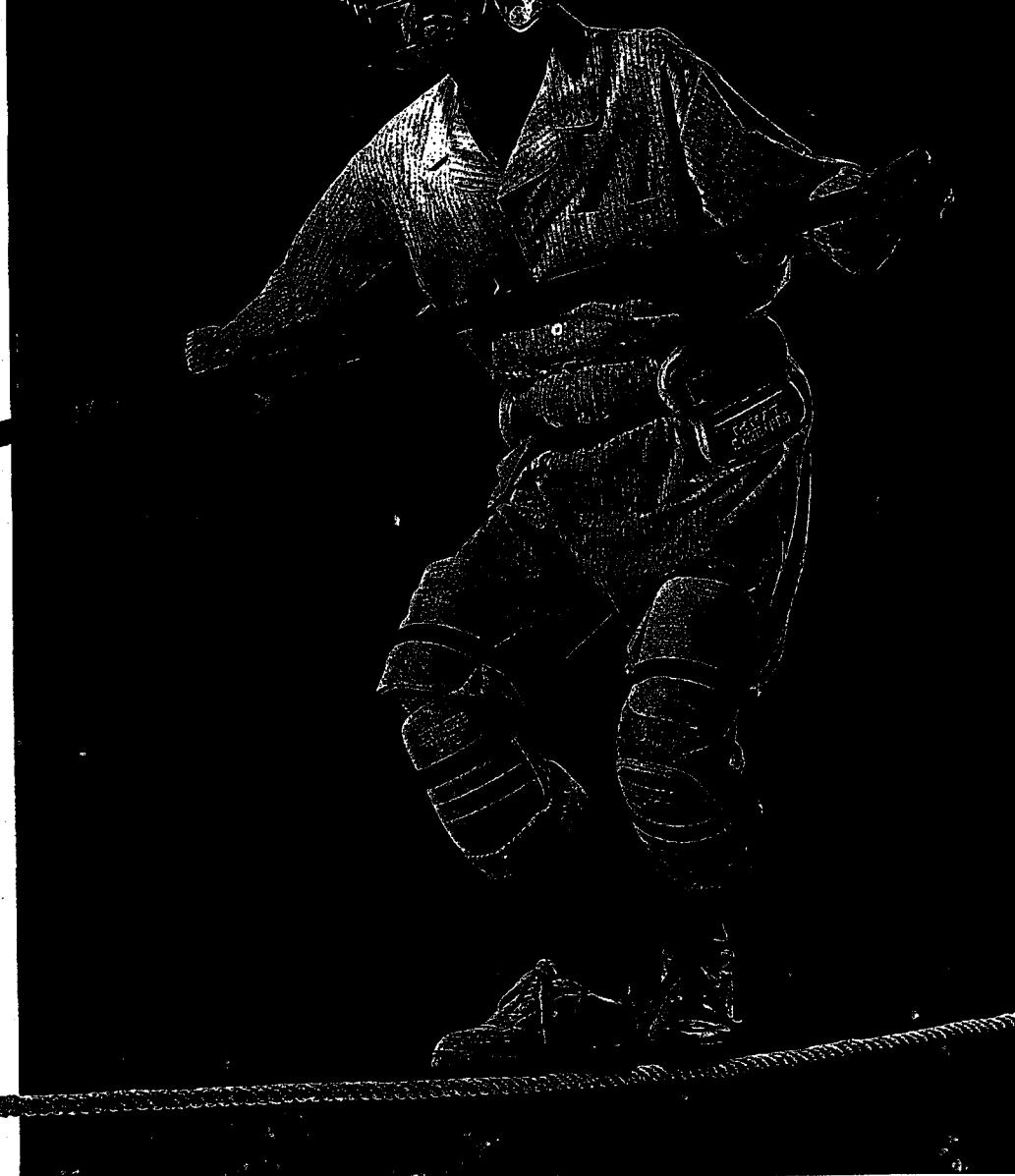


J.T. Posey Company
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5635 Peck Road
Arcadia, CA 91006-0020 USA
Fax 626-443-5014
www.posey.com

M6079 050605

PC 1088

For Some Residents, Every Fall is a Big One

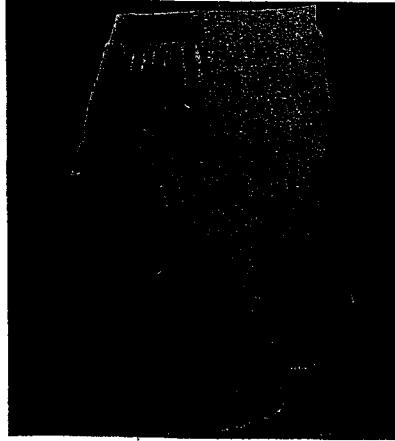


Posey®

FIRST IN
FALL MANAGEMENT

PC 1093

Posey Hipsters Help Protect Against Injury From Falls



It's a long way down for residents at risk of injury from falls. You can greatly reduce that risk with Posey Hipsters. The Hipsters' high energy-absorbing foam pads are positioned precisely over the hip bones, increasing the odds of surviving a fall uninjured. The Hipsters are comfortable and slim enough to be virtually undetectable under clothing. By offering increased protection, Hipsters relieve residents' anxiety about falling and enhance their quality of life.

- High impact-absorbing viscoelastic pads protect hip bones against injury from falls
- Soft, comfortable pads improve compliance versus hard-shell products
- Washable to CDC guidelines for soiled linen without removing the pads
- 100% latex-free
- Five sizes for correct fit
- Discreet, low-profile pads are virtually undetectable under clothing



Posey Hipsters innerwear fit discretely under men's and women's clothing, as shown by these models who are wearing Standard Hipsters Briefs.



Now, Posey Hipster Pads are available in two models!

All Posey Hipsters can be washed according to CDC guidelines for healthcare facilities. Hipsters with high durability pads are designed to withstand laundering in large capacity machines at higher temperature hot 180°F (82°C) washing and high temperature drying cycles. Standard Hipsters will wash at 120°F (50°C) and dry at medium temperatures. The complete Guidelines for Laundry in Health Care facilities are available at: www.cdc.gov/od/ohs/biosfty/laundry.htm. The CDC states that "the risk of actual disease transmission from soiled linen is negligible" and "recent studies have shown that a satisfactory reduction of microbial contamination can be achieved at lower water temperatures of 72°-122°F (22°-50°C) when the cycling of the washer, the wash formula, and the amount of chlorine bleach are carefully monitored and controlled." CDC offers the following advice for home care, "In the home, normal washing and drying cycles including 'hot' or 'cold' cycles are adequate to ensure patient safety. Manufacturers instructions for the machine and the detergent or wash additive should be followed closely."¹ Lower wash/dry temperatures will prolong garment life.

LAUNDERING INSTRUCTIONS:

Hipsters

High Durability Hipsters

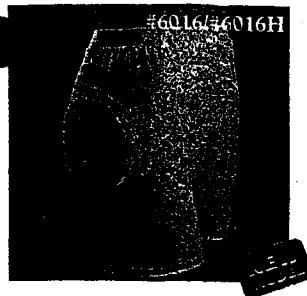
Posey High Durability Hipsters contain denser foam than the standard Hipsters. This increased density aids in its ability to withstand higher hot washing and drying cycles.

¹ www.cdc.gov/hicidod/hip/Sterile/laundry.htm

Special offer: 30-day no-risk free trial.
Test the Posey Hipsters for yourself with no obligation to buy.

PC 1094

POSEY HIPSTERS INNERWEAR



#6016/#6016H

#6016 STANDARD BRIEF

- Easily fits over undergarments, or can be worn as underwear.
- Unisex sizing.
- #6016H Standard Brief with High Durability Pads.



#6017/#6017H

#6017 INCONTINENT BRIEF

- Snap front for easier application over diaper. Unisex sizing.
- #6017H Incontinent Brief with High Durability Pads.



#6018/#6018H

#6018 MALE FLY BRIEF

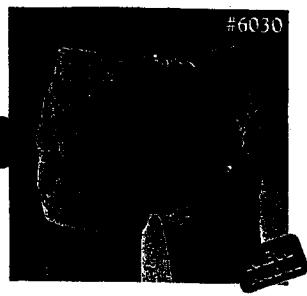
- Easily fits over undergarments, or can be worn as underwear.
- Fly front for improved compliance in male residents.
- #6018H Male Fly Brief with High Durability Pads.



#6019/#6019H

#6019 EZ-ON BRIEF

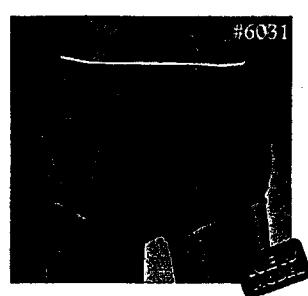
- Residents can wear their own undergarments.
- Can be worn in the shower.
- Hip pads can be removed for laundering or replacement.
- #6019H EZ-ON Brief with High Durability Pads.



#6030

#6030 LADIES PANTIES

- Same look as regular day-to-day panties.
- Ladies model is made of soft pink cotton blend material and decorative pink lace with a small rose detail.
- Reinforced panty line.
- Latex free.

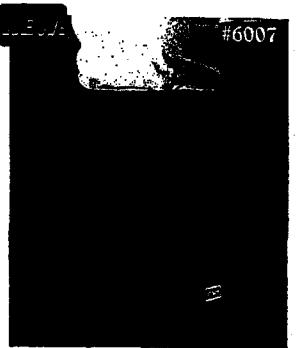


#6031

#6031 MEN'S FLY BRIEF

- Designed to mirror men's regular briefs.
- Men's model is made of soft gray cotton blend material.
- Latex free.

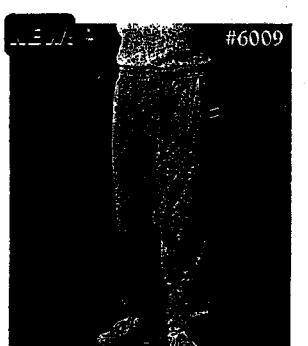
POSEY HIPSTERS OUTERWEAR



#6007

#6007 SHORTS

- Soft, preshrunk polyester/cotton blend garment.
- Soft, inner lining holds High Durability Pads in place.
- Available in Ash Gray or Navy Blue.



#6009

#6009 SWEATPANTS

- Soft, preshrunk polyester/cotton blend garment.
- Ankle zippers provide added comfort to swollen feet and ankles.
- Soft, inner lining holds High Durability Pads in place.
- Available in Ash Gray or Navy Blue.

SIZING CHART		
Size	Waist Measurement	Hip Measurement
XS	26" - 28" or 66 - 71cm	33" - 35" or 83 - 88cm
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XL	38" - 42" or 96 - 106cm	45" - 49" or 114 - 124cm
XXL	42" - 46" or 106 - 116cm	49" - 53" or 124 - 134cm

Note: Sweatpants and Shorts are available in sizes X-Small - X-Large only.



Posey | J.T. Posey Company • 5635 Peck Road, Arcadia, CA 91006-0020 USA
Phone: 800-447-6739 • Fax: 800-767-3933 • Web: www.posey.com

PC 1095

John
9/2/01

Clinical References Supporting the Use of Hip Protectors

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Author: A. Ekman, H. Mallmin, K. Michaësson, S. Ljunghall
Publication: The Lancet, volume 350, August 23, 1997

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Please detach and fax to 1-626-443-5014, or call us at 1-800-44-POSEY to start your trial

yes!

I want to take advantage of your 30-day trial offer. Please have a representative call me to discuss Posey Hipsters.



Name _____

Title _____

Facility _____

Address _____

City _____ State _____ Zip _____

Telephone _____ Best time to call _____ am _____ pm _____

Email _____

Fax or mail to:



Posey Company
 Attn: Marketing Dept.
 5635 Peck Road
 Arcadia, CA 91006-0020 USA
 Fax 626-443-5014
www.posey.com

PC 1096

10000 00000

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

THE HIPSAVER COMPANY, INC.,) Civil Action No. 05-10917 PBS
Plaintiff,)
v.)
J.T. POSEY COMPANY,)
Defendant.)
AND RELATED COUNTERCLAIM.)

EXPERT REPORT OF KEVIN MINISSIAN

**WITNESS STATEMENT OF KEVIN MINISSIAN PURSUANT TO
RULE 26(a)(2)(B) OF THE FEDERAL RULES OF CIVIL PROCEDURE**

I. MY QUALIFICATIONS

Attached as Appendix "A" is a copy of my resume which identifies my qualifications and a list of publications authored by me during the preceding ten years and the cases in which I have testified as an expert at trial or deposition during the past four years.

I am presently employed as the Vice President of Operations at Norchem Corporation ("Norchem"). Briefly, Norchem is in the business of manufacturing and supplying laundry chemicals to the health care, linen, industrial and commercial laundry industry. As the Vice President of Operations and Technical Support of Norchem, I have had leadership roles in the areas of developing new laundry cleaning products, chemical injection systems and water and energy recycling equipment and systems.. I am the inventor of a single pump chemical injection system for commercial and institutional laundries. The invention is the subject of U.S. Patent No. 5,564,595. I am also the author of two articles related to wastewater recycling and the treatment of laundry wastewater. I am also a member of the TRSA and UTSA laundry trade association special project committees that evaluate new, innovative products, such as detergents, bleaching agents, energy and water conservation programs utilizing more effective washing formulas.

I have been actively involved in the TRSA, UTSA, IFI, NAILM and AATCC trade associations.

I am being compensated for my work in connection with this case and any testimony at the rate of \$ 125.00 per hour. This is my normal hourly rate for consulting work. In addition, Norchem is presently conducting some wash testing of some products in connection with this matter for which it is being compensated at the rate of \$ 85.00 per hour per technician plus use of

laundry facility. Neither my compensation nor the compensation of Norchem is dependent upon the content of my report, the nature of my opinions or the outcome of this litigation.

II. DATA AND OTHER INFORMATION RELIED UPON

The data and other information I relied upon in forming my opinions are listed in the attached Appendix "B".

III. MY OPINIONS

I have been asked to express an opinion regarding the accuracy of various statements that appear on the Internet website of The HipSaver Company, Inc. Specifically, I have been asked:

1. Whether the statement "Average Wash/Dry Temperature of Institution Laundries (180°)" is accurate?

In my opinion, this statement is false. Based on my experience, wash temperature range of institutional laundries currently is between 100 F – 160F. Therefore the average temperature is around 130 F and drying temperature for geriatric pads which is similar to hip protector is around 140-150 F. The CDC guideline does not specify such high wash temperatures.

2. Whether the representation "CDC Recommended Wash Temperature Range" of between 180 to 250 degrees is accurate?

In my opinion, this statement is false. As published, CDC guidelines provide two options: a) high temperature wash at least 160 F for Minimum of 25 minutes and b) low temperature wash 71-77 F. In both cases, CDC requires effective use of alkali, detergent, bleach and sour, but in low temperature wash it requires careful monitoring and proof of

proper use of laundry chemicals. In addition, effective drying of 140-150 F and ironing shall provide effective disinfection of common microorganism found in health care environment. CDC guidelines DO NOT recommend wash temperature range of 180 -250 F as advertised in HipSavers website.

3. Whether the representation that “CDC Guidelines Minimum Recommended Wash Temperature (160)” is accurate?

In my opinion, this statement is false. As published, CDC guidelines provide two options: a) high temperature wash at least 160 F for Minimum of 25 minutes and b) low temperature wash 71-77 F. In both cases, CDC requires effective use of alkali, detergent, bleach and sour, but in low temperature wash it requires careful monitoring and proof of proper use of laundry chemicals. In addition, it is well documented in Textile Laundering Technology textbook, which is widely used by laundry industry as guide to proper laundering, that effective use of chlorine bleach at lower temperatures ranging between 120-130 F and pH range between 9.0-10.0 provides an effective laundry disinfection method. Such lower temperature washing allows the industry to conserve energy and minimizes fabric degradation impacted by high temperature, alkali and chlorine bleach. Several studies have concluded that lower temperature washing protects the fabric color and drastically reduces fabric lint in the dryers.

4. Whether the statement that "Only HipSaver hip protectors clearly meets the CDC Guidelines for infection control in the laundry" and the statement "Only HipSaver can be laundered according to the CDC Center for Disease Control) Guidleines for laundry" are accurate?

In my opinion, this statement is false. Norchem has received 80 samples of hip protectors from Posey Company for purpose of evaluating to see whether or not Posey hip protectors meets the CDC wash guidelines for high and low temperature wash cycle. Posey provided 40 pieces of high durability (HD) and 40 pieces of standard (ST) hip protectors. According to Posey specification HD hip protectors are designed for high temperature wash cycle and ST for low temperature wash cycle. We were asked to wash these hip protectors in commercial laundry environment. We chose Valet Laundry Services facility located in El Monte California to wash Posey hip protectors under my supervision. We elected to use 100 lb. commercial laundry machine manufactured by Milnor Corporation equipped with hot and cold water inlet water valves, computer controlled washer microprocessor for accurate temperature control and Norchem's NORFLOW-WIN precision chemical injection system for dosing laundry chemicals such as alkali, detergent, bleach and sour. We divided 80 pieces of Posey hip protector into two separate batches, one batch consist of HD type and second batch ST type. For control purposes, we kept one sample from each batch in a plastic bag. Remaining hip protectors were then washed according to CDC guidelines to high and low temperature wash and dry. After each wash and dry cycle, each batch was examined and compared to control

sample. Each batch were washed 10 times and dried 10 times. The HD hip protector designed for high temperature washed according to CDC guideline showed slight color loss but no physical deformation or degradation. The ST hip protector washed at lower temperatures according to CDC guidelines for low temperature wash showed no sign of color loss or physical change. Both products maintained their integrity and shape after washing and drying at 150 F.

IV. POSSIBLE ADDITIONAL ANALYSIS AND INVESTIGATION

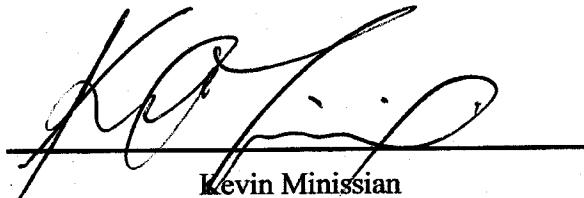
In support of my opinions, at trial, I may rely on visual aids and other demonstrative exhibits which may include, among other things, excerpts from deposition or trial testimony, documents and exhibits relied upon by other witnesses, additional information from the materials listed in Appendix "B", or other types of materials.

In addition, I may supplement this report in the event that additional information is provided to me. I may also rely on testimony given by, or to be given by, other witnesses and on other reports and/or documents supplied to me in the future.

My investigation is ongoing, and I may perform the following additional investigation:

1. We propose to further wash each HD and ST batches for additional 120 times and dry 120 times according to CDC guidelines. This shall provide further evidence whether or not the Posey hip protectors can withstand CDC's high temperature and low temperatures guidelines.
2. If necessary, we may also submit samples of Posey products to independent textile testing institute for independent evaluation.

DATED: February 15, 2006



Kevin Minissian

APPENDIX "A"

PROFESSIONAL RESUME

Kevin Minissian,
VP of Operations and Technical Support
Norchem Corporation
5649 Alhambra Ave.
Los Angeles, CA 90032

Phone: 323-221-0221
Fax. 323-227-8733
e-mail: Kevin@norchemcorp.com

Professional Experience

1978-1989 Founded Hychem Co. in 1978 to serve the hotel and commercial laundry industry with liquid chemical dispensing systems and laundry products.

1989 to Present In 1989 Hychem was incorporated into Norchem Corporation where I am currently Vice President of Operations and Technical Support. I am responsible for overall product development, design and manufacturing of laundry products, such as computerized chemical injection systems with proof of delivery to washers, water and energy recycling systems and washer controllers. I also supervise Norchem's field technicians to develop effective wash formulas and low energy wash processes to conserve water and energy for the hospital, linen and uniform laundry market. I frequently visit laundries to evaluate Norchem's product performance, the effectiveness of low temperature wash chemistry and wash quality, to conduct bacteriological testing of cleaned fabric with 3M bacterial plate count to insure that linen is hygienically clean and to conduct customer satisfaction survey.

Four years ago I worked with the U.S. Environmental Protection Agency (EPA) to develop laundry products Designed for Environment (dfe). The purpose of "dfe" is to introduce "green" chemistry to protect our environment, waterways and sewer systems. EPA has recognized NUpHASE and MAXIMIZE products in their "dfe" program. These two products were developed and formulated by me over a 10 year period. Following fours years of R & D, I was able to develop a

“new generation” laundry detergent named NORBRITE designed for “dfe” and lower wash temperatures (100-120 degrees F). I was instrumental in persuading Norchem Corporation’s laundry customers to convert to NORBRITE in support of lowering energy costs.

Currently I hold one patent for delivery and injection of laundry chemicals to commercial laundry machines.

Education

1970 University of Yerevan, Armenia (former Soviet Union
Engineering Degree in Electrical Engineering and Instrumentation

1975 University of California, Los Angeles,
Biochemistry, B.S.

Affiliations and Memberships

Textile Rental Supply Association (TRSA), Uniform Textile Rental Association (UTSA), National Association of Institutional Laundry Managers (NAILM), International Fabric Institute (IFI), American Association of Textile Chemist and Colorist (AATCC).

Articles/Publications

“Water Recovery and Recycling: Ceramic Membrane Filtration Benefits”, Kevin Minissian, *Textile Rental*, March 2004

“Reduce Your Sludge Volume Through Centrifugation”, Kevin G. Minissian, *Textile Rental*, April, 2002

Deposition Testimony

10/07/05 - Bryant v. Norchem Corp., Orange County Sup. Ct Case No. 04 CC 08663

APPENDIX "B"

Documents Reviewed

Document Description	Beginning Bates No.	Ending Bates No.	Date
Jaska and Fredell, <i>Impact of Detergent Systems on Bacterial Survival on Laundered Fabrics</i> , Applied and Environmental Microbiology 39(4):743-748	PC1958	PC1963	April 1980
Mallison, <i>Is low temperature washing safe and effective?</i> , Textile Rental 46-54	PC2050	PC2053	April 1981
Battles and Vesley, <i>Wash Water Temperature and Sanitation In the Hospital Laundry</i> , Journal of Environmental Health, 43(5), 244-250	PC1964	PC1970	1981
Erkenbrecher and Paradee, <i>Low-temp washing for hospital linen</i> , Textile Rental 65(9):64-5, 67-8, 70 <i>passim</i> .	PC2041	PC2049	May 1982
Christian, Manchester and Mellor, <i>Bacteriological Quality of Fabrics Washed at Lower-Than-Standard Temperatures in a Hospital laundry Facility</i> , Applied and Environmental Microbiology 45(2):591-597	PC1951	PC1957	February 1983
Blaser, et al., <i>Killing of Fabric-Associated Bacteria in Hospital Laundry by Low-Temperature Washing</i> , Journal of Infectious Diseases 149(1):48-57	PC1933	PC1942	January 1984
Baker, <i>The V.A. and Low Temp Washing – An Update</i> , Textile Rental 58, 60, 62	PC2033	PC2035	August 1985
Smith, et al., <i>Effect of Water</i>	PC1927	PC1932	August 1987

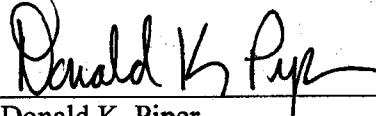
Document Description	Beginning Bates No.	Ending Bates No.	Date
<i>Temperature on Bacterial Killing in Laundry</i> , Infect. Control (8):294-09			
Tompkins, Johnson and Fittall, <i>Low-temperature washing of patients' clothing; effects of detergent with disinfectant and a tunnel drier on bacterial survival</i> , Journal of Hospital Infection 12:51-58	PC1943	PC1950	December 1988
TRSA Healthcare Service Operations Manual	PC2113	PC2155	1995
TRSA Guidelines For Healthcare Linen Service-1999 – By Joint Committee on Healthcare Laundry Guidelines	PC2101	PC2112	1999
HipSaver Web Page entitled "Hip Protectors & The Laundry"	PC0338	PC0339	2005
CDC Guidelines for Environmental Infection Control in Health-Care Facilities	PC0377	PC0389	2003
CDC Guidelines for Laundry in Health Care Facilities, document linked from HipSaver Web Page (Reference: Garner and Favero, <i>Guideline for Handwashing and Hospital Environmental Control</i> , in Guidelines for Protecting the Safety and Health of Health Care Workers)	PC0375	PC0376	1985
Riggs and Klipper, <i>Textile Laundering Technology</i> , Textile Rental Services of America			2005

Wash formula guide used to wash Posey product samples met CDC guidelines. Washing guide record chemical titration levels for alkali, bleach and sour. Kevin Minissian	PC	PC	February 14, 2006
Each wash and dry cycle has been documented and recorded on a log sheet to track product performance. Kevin Minissian	PC	PC	February 14, 2006
Posey samples have been inspected after each wash to monitor product performance in low and high temperature wash according to CDC guideline. Kevin Minissian.	PC	PC	February 14, 2006
Included a Genie wash test piece in the wash cycle with Posey samples to determine chlorine bleach intensity and effective stain removal. Kevin Minissian	PC	PC	February 14, 2006

CERTIFICATE OF SERVICE

I certify that a copy of this document has been forwarded by electronic filing and USPS First Class mail today to Plaintiff's counsel of record, Edward J. Dailey, Esq., BROMBERG & SUNSTEIN, LLP, 125 Summer Street, 11th Floor, Boston, Massachusetts 02110-1618.

Dated: February 16, 2006



Donald K. Piper

EXHIBIT 26

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

THE HIPSAVER COMPANY, INC.,) Civil Action No. 05-10917 PBS
Plaintiff,)
v.)
J.T. POSEY COMPANY,)
Defendant.)
AND RELATED COUNTERCLAIM.)

SUPPLEMENTAL EXPERT REPORT OF KEVIN MINISSIAN

CONFIDENTIAL – ATTORNEYS' EYES ONLY

SUPPLEMENTAL WITNESS STATEMENT OF KEVIN MINISSIAN

I. ACTIVITIES SUBSEQUENT TO INITIAL REPORT

AFTER 10 SUBSEQUENT WASH, ONE SAMPLE OF POSEY HIP PROTECTOR
WAS REMOVED FROM THE WASH LOAD AND PLACED IN A PLASTIC BAG. FOUR
SEPARATE BAGS WERE USED TO SEGREGATE HIGH AND LOW
TEMPERATURE WASH CYCLES THAT MET CDC GUIDELINES. AFTER 100 WASH
CYCLES, THERE WERE 10 SAMPLES LEFT FROM EACH BATCH.

Deleted XXX

II. MY OPINIONS

Following > 100 wash cycles and further examination of final condition of Posey hip
protectors, I concluded that this product performed very well and did not indicate any chemical
and physical deterioration from chemical, high and low wash water temperature as stated in CDC
guidelines.

Deleted XXX

III. POSSIBLE ADDITIONAL ANALYSIS AND INVESTIGATION

In support of my opinions, at trial, I may rely on visual aids and other demonstrative exhibits which may include, among other things, excerpts from deposition or trial testimony, documents and exhibits relied upon by other witnesses, additional information from the materials listed in Appendix "B" of my original report or other types of materials.

DATED: October 16, 2006



Kevin Minissian

EXHIBIT 27

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

THE HIPSAVER COMPANY, INC.,) Civil Action No. 05-10917 PBS
Plaintiff,)
v.)
J.T. POSEY COMPANY,)
Defendant.)
AND RELATED COUNTERCLAIM.)

EXPERT DESIGNATION INCLUDING REPORT OF GARY REICH

CONFIDENTIAL -ATTORNEYS' EYES ONLY

EXPERT REPORT AND DISCLOSURES OF GARY REICH

I. INTRODUCTORY STATEMENT

1. I, Gary Reich, have been retained by Defendant/Counterclaimant J.T. Posey Company ("Posey") in this matter to provide expert testimony regarding certain advertising statements made by Posey and by Plaintiff/Counterdefendant The HipSaver Company, Inc. ("HipSaver") and regarding the impact of such advertising on customers and potential customers and on sales. I submit this report pursuant to Rule 26(a)(2)(B) of the Federal Rules of Civil Procedure.

2. This report contains a complete statement of all opinions that I have formed to date in connection with my assignment in this case. It also includes a complete statement of the basis and reasons for those opinions, and the information that I considered in forming the opinions. This report also contains a summary of my qualifications, and the rate that I am charging in this matter.

3. My expert opinions regarding these subject areas are set forth below, and are based upon my expertise in marketing, including but not limited to health care consulting services, products sales, managed care, and long-term care, and upon my visual inspection and analysis of the advertisements and sales information of each company.

II. BACKGROUND AND QUALIFICATIONS

4. My background, experience, and education are described in detail in my resume attached as Attachment A to this report.

5. Briefly, I have extensive experience in the marketing of health care products and with the impact of advertising for medical products on customers and potential customers. I have acted as a marketing consultant for a variety of companies in the health care business, including

CIGNA, New York Presbyterian Health System, Prudential and Tenet. Presently, I am a marketing consultant for TriHealth, Florida Hospital Health System, and Watson Clinic. I have 20 years of experience in this field.

6. In the normal course of my consulting activities in the health care industry, I evaluate different manufacturer's products, including product features, I talk with customers and potential customers regarding potential benefits to them. As a consequence of my extensive involvement in the industry, I am familiar with the buying habits of customers of healthcare-related products. In addition, I have developed marketing plans and advertisements for companies who market via the Internet, via brochures, product instruction sheets, trade shows, and catalogs. The products for which I have provided marketing assistance, including the development of advertising, include dose calibrators, thyroid up-take systems, work stations, wipe test counters, injection chairs, survey meters, living skin products for healing wounds, hyperbaric medicines for wound care, IV nutrition, and antibiotics.

7. I graduated from George Washington University with a Bachelor of Arts in Economics degree in 1983, and from New York University with a Masters Degree in Economics in 1985.

8. Based on the data and information I have reviewed in connection with my assignment in this case, the majority of both Posey's and HipSaver's customers consist of healthcare facilities, long-term care facilities homes, and acute care facilities. In the industry, these types of customers are considered sophisticated buyers. These types of buyers are experienced who buy a wide diversity of products, for example from food to pharmaceuticals to disposable products to capital goods. Thus, buyers of HipSaver's and Posey's products will consider and evaluate the

price, the quality, tests and studies, testimonials, compliance rates, reputation of the manufacturer, and weigh these factors prior to making a purchase.

9. I have marketed to the types of consumers targeted by both Posey and HipSaver, and I have a strong understanding of the impact of advertising on these types of customers. Recently, I have focused on long-term care. In forming my opinions, I have taken into account the types of customers targeted by each company.

III. COMPENSATION

10. In connection with the preparation of this report, I am being compensated at the flat rate of \$3,500. I will be compensated at an hourly rate of \$125 for any additional time spent in connection with this matter. My compensation is not contingent on the outcome of the trial nor upon the nature of my opinions.

11. I have not previously testified as an expert in any litigation matters.

IV. DATA AND OTHER INFORMATION CONSIDERED

12. In connection with the preparation of this report, I considered the following data and information:

- a. The materials identified in Attachment B;
- b. HipSaver's and Posey's websites, which I reviewed on or about February 6 through February 9, 2006;
- c. Telephonic interview with Charleen McGrath and Victoria Walters of Posey, as a result of which I learned that:
 - i. Posey distributes its advertising in the form of brochures, catalogs, product inserts, and via its Internet website;

- ii. Posey has about 28 independent sales representatives who sell to both acute care facilities and long-term care facilities;
- iii. Posey has several contracts with nursing home chains, major distributors, and dealers in hip protectors;
- iv. Posey supplements its marketing by attending national and regional trade shows;
- v. Posey introduced its first hip protectors to the market in 1999-2000, and redesigned them in 2001;
- vi. Hip protectors are a voluntary product that are not prescribed by doctors, Medicare or insurance companies, therefore, the patient's family or nursing home must promote the hip protector;
- vii. Care facilities often recycle the hip protectors, and the hip protectors are replaced at a given facility when worn out;
- viii. Posey engaged Garwood Laboratories to conduct some testing of certain hip protector materials in or about 2001;
- ix. The results of the Garwood Laboratories tests were used to develop advertising for Posey (the "Garwood Laboratories Advertising"); and
- x. The first public dissemination of the Garwood Laboratories Advertising was in 2001.

V. ANALYSIS FOR POSEY'S GARWOOD LABORATORIES ADVERTISEMENT

13. I was specifically requested to review Posey's Garwood Laboratories Advertising in the Posey materials identified in Attachment B. Each advertisement includes a bar graph and a paragraph about the study that was conducted.

A. STATEMENT OF OPINIONS

14. After careful study of the documents and information given to me, I formed the following opinions:

a. The words "independent study" do not suggest to a consumer that Posey did not pay Garwood Laboratories for the testing.

b. The statements "[a]n independent Laboratories study was conducted to determine the most effective impact absorbing material" and "Posey engaged Garwood Laboratories to conduct testing to select a comfortable and effective impact absorbing material" indicate to a consumer that Posey tested materials to determine the "most effective" material at reducing the force of impact.

c. The statements "[a]n independent Laboratories study was conducted to determine the most effective impact absorbing material" and "Posey engaged Garwood Laboratories to conduct testing to select a comfortable and effective impact absorbing material" do not indicate to a consumer that the Posey Hipster is the most effective product in the marketplace, or that all other products are inferior, either at reducing impact force or for comfortability.

d. The Garwood Laboratories Advertising is not misleading to consumers as to the type of fall tested; a consumer would understand that a dropping type of fall was tested, and not a fall from a standing position.

B. STATEMENT OF BASIS/REASONS FOR OPINIONS

15. A consumer assumes that a manufacturer pays a laboratory or other facility to test its products, and payment for a study or testing does not suggest that the study or testing was biased towards the manufacturer's product. Typically, studies are funded. For example, Underwriters'

Laboratories is paid to provide a "UL" certification for a manufacturer's product. A second example, it is well-known in hospitals and care facilities that companies pay for their facilities to be accredited by national bodies, such as JCAHO. Thus, the words "independent study" do not suggest that Posey did not pay Garwood for the study.

16. The statements "[a]n independent Laboratories study was conducted to determine the most effective impact absorbing material" and "Posey engaged Garwood Laboratories to conduct testing to select a comfortable and effective impact absorbing material" indicate to the consumer that Posey tested materials for their effectiveness at reducing the force of an impact. Given that the bar graph and the paragraph describing the test are part of the advertising, a consumer would not be misled into thinking that "most effective" refers to anything other than the effectiveness at reducing the force. A consumer would not believe that Garwood Laboratories tested the comfortability of materials. The remainder of the study is directed to the methodology of the study of reducing impact force, not comfortability.

17. The above statements do not indicate that the Posey Hipster is the most effective product in the marketplace, or that all other products are inferior because Posey makes no comparison with any other products in its advertisements and does not mention any other products in the Garwood Laboratories Advertising. A consumer would not believe that Posey's hip protector is necessarily more effective at reducing impact force, or more comfortable, than any or all other hip protectors.

18. The Garwood Laboratories Advertising is not misleading as to the type of fall tested. The advertisement clearly states "a weight was released in a guided drop to simulate a 120lb subject falling from a height of 36'." A consumer would not assume that any other types of fall, were included in the testing.

VI. ANALYSIS OF POSEY'S GARWOOD LABORATORIES ADVERTISING EFFECT ON POSEY AND HIPSAYER SALES

A. STATEMENT OF OPINIONS

19. There is no basis to conclude that the Garwood Laboratories advertising had any effect on HipSaver sales or Posey sales. It would be total speculation to state otherwise.

B. STATEMENTS OF BASIS/REASONS FOR OPINIONS

20. For both Posey and HipSaver, there is a consistent pattern of unit sales increases every year. However, the rate of growth of unit sales declines for each company each year compared to the previous year. For example, the rates of growth for the companies are converging, in that the percentage rate of growth declines each year in a similar amount for each company (i.e., HipSaver sales were 22% greater in 2004 compared to 2003, Posey sales were 21.7% greater in 2004 compared to 2003; HipSaver sales were 9% greater in 2005 compared to 2004, Posey sales were 10.5% greater in 2005 compared to 2004). The sales patterns indicate that there is a classic medical product sales trend. Initially, when products are launched, there are numerous sales for the product because there is initial excitement about the product, a large base of potential customers who have not used the product, and sales representatives tend to focus their time on the new product. Thus, the sales growth is often highest when the product is first introduced or re-introduced to the market. The biggest increase will usually be at the initial introduction of the product to the market because there are the greatest number of potential customers for the product. For example, an increase of sales from 10 units to 20 units equals a 100% growth rate, however, going from 20 units to 30 units equals only a 50% growth rate, even though the increase in sales of 10 units is the same.

21. There is a limited market for this type of product, and only certain consumers are targeted. It is also a voluntary product that is not prescribed by Medicare or insurance

companies, and the family or nursing home of the patient must promote the hip protector. There is a finite number of elderly or frail patients who would qualify or benefit from this type of product. After the majority of this market has been reached, the life cycle of the product begins to mature.

22. Nursing homes and care facilities often recycle the hip protectors, and thus, subsequent purchases of the product are not as frequent. Once the pipeline is filled at a given facility, only worn out units or units for new patients are needed.

23. Posey's re-designed hip protector was introduced in 2001, and this year shows Posey's strongest growth in sales, as expected for a re-designed product such as a hip protector. Posey's sales growth actually declined in 2002 after the Garwood Laboratories Advertising was disseminated in 2001.

24. Posey's package inserts containing the Garwood Laboratories Advertising had little, if any, influence on consumers' decisions to buy a Posey Hipster because the buyers would have already purchased the product before they received the insert.

25. The placement and format of the Garwood Laboratories Advertisements in the material – on the second or third page in the corner or bottom of the page in small print - is not very effective advertising because it does not grab a buyer's attention.

26. Posey's target customers are typically sophisticated consumers who will consider several factors other than the reduction of impact force when selecting a hip protector, such as cost, comfortability, penetration of the market, quality, acceptance, and reputation of the company.

27. Other marketplace factors minimize the effect Posey's advertising will have had on customers or prospective customers. Posey has a strong awareness among potential buyers due

to the fact that Posey has been in the business for over 60 years, the fact that Posey has extended contracts with certain customers, the fact that Posey has a sales force, the fact that Posey has an established reputation, and the fact that Posey markets numerous products, as a result of which it can offer customers "one-stop shopping."

VII. ANALYSIS OF HIPSAVER ADVERTISING

28. I was requested to review several statements made on the HipSaver website attached as Attachment B pertaining to HipSaver's validation and testing, laundering, and length on the marketplace.

A. STATEMENT OF OPINIONS

29. Customers would believe that:

- a. HipSaver's statements pertaining to validation and test results of hip protectors pertain to HipSaver's hip protectors that are currently sold on the market.
- b. Reference to a "soft hip protector" means a hip protector with both soft and hard components.
- c. HipSavers hip protectors can be washed at temperatures of up to 250°F.
- d. Posey hip protectors do not meet CDC Guidelines for infection control in the laundry.
- e. HipSaver's chart on its website stating that Posey Hipsters have been offered to the market since 2002, and that HipSaver's products has been offered to the market since 1995, indicate that these companies both first introduced hip protectors, of any type in 2002 and 1995, respectively.

B. STATEMENT OF BASIS/REASONS FOR OPINIONS

1. Validation & Testing

30. HipSaver makes several statements about the quality and testing success of its hip protectors on its website, including the following: (i) "Prevent devastating hip injury with the only scientifically validated soft hip protector"; (ii) HipSaver is the "only proven, all-soft hip protector"; and (iii) HipSaver is "the only soft pad hip protector that has clinical validation."

31. A consumer seeing these statements would believe that they pertain to hip protectors currently sold on the marketplace. When a company touts the effectiveness and testing "validation" of its product, consumers likely believe that the company tested the product it is currently selling, and not an older product. It is misleading to tout a product that the company no longer sells.

32. On its website, HipSaver makes the distinction between "soft" and "all-soft," which indicates that "soft" hip protectors may be a combination of soft and rigid materials, whereas "all-soft" hip protectors are entirely constructed of soft materials. It would expect too much for the potential buyer to know the details of the construction and variety of hip protectors.

2. Launderability

33. In its advertising materials, HipSaver makes several statements about the launderability of its hip protectors, including the following: (i) "Only HipSaver hip protectors clearly meets the CDC Guidelines for infection control in the laundry"; and (ii) "Only HipSaver can be laundered according to the CDC (Center for Disease Control) Guidelines for laundry."

34. The overall impression from Hipsaver's statements about launderability is that Posey's products do not meet CDC Guidelines. For example, the use of the word "only" indicates that HipSaver has tested the launderability of its product, that HipSaver has tested, or knows of launderability tests, for other products in the marketplace, and HipSaver can conclude that only HipSavers meet the CDC Guidelines. Also, HipSaver's comparison chart on its

website comparing its launderability to Posey and AliMed also indicates that HipSaver has tested or knows of launderability tests for other hip protectors in the marketplace. Further, according to HipSaver's statements, Posey's Hipster is machine wash up to 160°F at a maximum, and the CDC Guidelines recommended wash temperature is at least 180°F. Thus, a consumer would conclude that Posey does not meet the CDC Guidelines for washing.

35. On its website, HipSaver also makes statements about the temperature at which its products may be washed. These include the following: (i) "HipSaver machine wash/dry up to 250°F"; and (ii) "HipSavers wash and dry up to 250°F." Thus, a consumer would likely assume that HipSavers can be washed at temperatures of up to 250°F, and then separately dried at temperatures of up to 250°F.

3. Length of Time On the Market

36. HipSaver's website includes an "Industry Comparisons" chart in which several statements are made to compare HipSaver's and Posey's products. HipSaver states that HipSaver hip protectors have been offered to the market since 1995 and Posey "Hipster" hip protectors have been offered to the market since 2002.

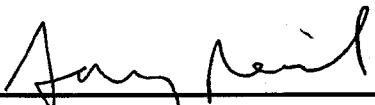
37. These statements indicate to consumers that these companies first introduced hip protectors to the market, or alternatively, that these companies first introduced the hip protectors that the companies are currently selling, including any modifications that have been made in these respective years.

VIII. CONCLUSION AND POSSIBLE ADDITIONAL ANALYSIS AND INVESTIGATION

38. In support of my opinions, I may rely on visual aids and other demonstrative exhibits which may include, among other things, the information from the materials listed in Attachment B, telephonic interviews, websites, deposition testimony, or other types of materials.

39. The foregoing reflects my opinions and reasons therefore based on the materials I have reviewed to date. I understand that the investigations are on-going, and that additional information may be discovered and provided to me after the submission of this report. I reserve the right to supplement this report in the event that additional information is provided. I may also rely on testimony given or to be given by various witnesses and on other reports and/or documents supplied to me in the future.

DATED: February 12, 2006


Gary Reich

GARY L. REICH

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BUSINESS DEVELOPMENT / MARKETING EXECUTIVE

Innovative, top performer with twenty year proven track record developing and marketing businesses, and managing people in both mature and growth industries. Strategic planner with solid experience in business-to-business applications and processes spanning Fortune 500 to mid-size companies. Landed and managed multi-million dollar contracts in diverse aspects of the Health Care industry. Credited with exceptional vision in developing new products and creating industry acceptance and demand. Designed and established new health care software solutions, pioneered and led teams in successful national and regional marketing programs, and directed business development for major corporations. Prominent customers include CIGNA, New York Presbyterian Health System, Prudential, and Tenet. Articulate, well-informed communicator with talent for building trust and alliances with top executives to support staff. High-ranking New York University graduate with MA. in Economics. Excellent writing skills. Spanish fluency.

PRESIDENT

January 2001 to Present

REICH CONSULTING SERVICES

Ft. Lauderdale, FL

Successful health care consulting services, specializing in imaging, managed care, nuclear medicine, real estate, surgery, and wound care.

- Planned marketing and sales strategy for three MRI and Positron Emission Tomography (PET) centers, which increased revenue from zero to more than \$3 million. Created and supervised sales programs.
- Completed a market research project that identified PET center development opportunities nationwide with hospitals and radiology groups. Developed presentations and facilitated meetings among top executives.
- Provided market research for a feasibility study regarding the development of a new outpatient surgery center.
- Developed and implemented a marketing plan for Lakeside Executive Suites which increased occupancy from 80% to 100% within six months.
- Created and supervised a new marketing plan for the Weston Outpatient Surgical Center which increased average net revenue \$34,000 per month and increased average profit \$13,000 per month.
- Negotiated three new managed care contracts for an ancillary service provider to the long-term care industry. Results are better customer service and increased revenue of more than \$500,000.
- Recommended managed care opportunities for a long-term care provider.
- Designed, wrote, and implemented case reports and a clinical newsletter for a national provider of wound healing centers to promote better clinical education tools to physicians at a national clinical meeting.
- Provided HIPAA compliance-training programs to four medical offices.
- Integrate off-the-shelf nuclear medicine and PET laboratory equipment with custom stainless steel laboratory cabinets to achieve optimal levels of radiation safety at 35 hospitals and imaging centers.
- Raised \$3.3 million for Weston Pavilion Partners, LLLP, in order to purchase the Weston Medical Surgical Pavilion, a two-story 30,000-square foot medical building in Weston, Florida.
- Completed an offering of units in the ParkCreek Surgery Center, LLLP, which raised \$10 million to construct a 21,400 square foot ambulatory surgery center in Coconut Creek, Florida.

GENERAL MANAGER

1998 – December 2000

CAREVIEW

Pompano Beach, FL

Managed a \$1 million budget for CareView, a subsidiary of Visual Data Corporation, an Internet content provider company, with \$6 million annual revenues. CareView is a health care software application that helps hospitals locate and communicate discharge information with long-term care facilities.

- Reported to the Vice President, promoted in two years to General Manager from Director of Business Development.
- Analyzed hospital needs across the country for a more efficient discharge planning process, and created and implemented application solutions across multiple hospital departments and long-term care affiliates.
- Catapulted the number of hospital installations from zero to 346. Won the trust of top health care executives for this innovative product, and within two years established a database of more than 2,800 professional health care users. Customers include Columbia Presbyterian, Jackson Memorial, and New York Hospital. Increased industry usage by 789% this year, representing over 28,200 page views versus 3,800 in 1999.

GARY L. REICH, p2

- Recruited, hired, and managed four Business Development Managers. Coordinated website design and application enhancements and supervised HTML programming. Led long-term care sales in South Florida.

DIRECTOR, BUSINESS DEVELOPMENT
1996 – 1998**PARKWAY REGIONAL HOSPITAL**
Miami, FL

Led strategic planning for all hospital product lines at a 382-bed hospital. Parkway Regional is part of the Tenet Healthcare system, a \$9 billion provider of health care services, with 112 hospitals nationwide. Hospital met and exceeded its revenue and profitability goals.

- Authored and coordinated the hospital's annual strategic plan with department directors and achieved new income records totaling \$13 million from breakeven the prior year. Working on key executive team with the CEO, Regional, and Corporate Directors, increased total patient days by 9%, and outpatient visits by 11%. Credited with exceptional ability to evaluate existing business, coordinate information, and achieve results.
- Spearheaded development and implementation of product line programs in collaboration with hospital departments. Wrote business plan for the Healthy Heart Center, a community education service developed to reduce the incidence of heart disease. Designed workflow, recruited staff, marketed the program in the community, and expedited software implementation. Directly credited with increasing cardiac outpatient revenues by \$300,000 per year, and reducing losses from inpatient admissions by \$100,000 per year.
- Reorganized the Wound Care Center after the departure of its management company. Identified a new location, improved community marketing, added new hyperbaric services, and initiated a clinical trial agreement for Apligraf, a living skin product. The result was over \$2 million in increased revenue.
- Recruited five key specialty physicians to increase annual maternity revenues by \$500,000.
- Supervised a highly effective department of seven professionals and support staff.

PRESIDENT
1993 – 1995**REICH CONSULTING SERVICES**
Ft. Lauderdale, FL

Founded and managed a successful health care consulting service. Major national customers included HIP, OrNda, and Sterling Healthcare.

- Identified opportunities to enhance managed care revenue and negotiated a \$300,000 primary care physician agreement with a 70,000-member HMO, which provided a new source of business for this private practice.
- Created a home care traveling staffing program, which resulted in over \$500,000 in new revenue the first year.
- Marketed the expertise of a South Florida physician specialty, utilization review, and claims processing service to Managed Care Companies in three states, so that the company could obtain \$5 million in new sales.
- Managed a North Miami Beach community health center, evaluated its turn-around potential, and recommended its closure to save its owner, Sterling Healthcare, \$250,000 per year.

MANAGED CARE ACCOUNT EXECUTIVE
1986 – 1993**MEDICAL CARE AMERICA**
Miami, FL

Promoted five times in seven years to Account Executive from Marketing Specialist, catapulting annual sales to \$650 million from \$11 million for this national provider of home infusion and ambulatory surgery. Medical Care America employed 5,000 people in twenty states at more than 100 health care centers. Survived three mergers and acquisitions of this company, which originated as CarePlus, and was merged into New England Critical Care, Critical Care America, and Medical Care International.

- Pioneered major account sales to managed care companies in 16 states on behalf of 25 profit centers. Negotiated 16 contracts covering 1 million members, resulting in annual revenue of \$21 million.
- Increased infusion therapy revenues by \$2,000,000, in South Florida, by negotiating new contracts with three managed care companies. During second quarter 1993, achieved 112% of sales plan.
- Driving force in formulating and implementing sales and marketing strategies for physicians and hospitals within multi-state regions. Worked closely with field, regional, and corporate management. Instituted managed care reporting programs. Analyzed potential expansion markets and acquisitions. Managed investor relations, advertising, collateral materials, and promotions.
- Assisted in growing the number of CarePlus offices from 4 to 20, with gross margins of more than 25%, making the company a desirable potential acquisition.

Education**M.A., ECONOMICS**
1985**B.A., ECONOMICS**
1983**NEW YORK UNIVERSITY**
New York, NY**GEORGE WASHINGTON UNIVERSITY**
Washington, DC

ATTACHMENT B

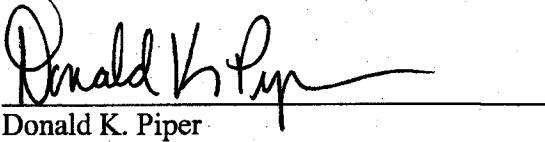
In preparation of my expert report, I considered the following data and information:

- a. "Posey EZ On Hipsters" package insert dated June 20, 2003 (Bates Nos. PC0406-PC 0407);
- b. Posey brochure dated September 26, 2003 (Bates Nos. PC1810-PC1913);
- c. Posey brochure dated January 3, 2005 (Bates Nos. PC1743-PC1746);
- d. "Posey Hipsters" package insert dated April 28, 2005 (Bates Nos. PC0402-PC0403);
- e. Posey brochure dated May 9, 2005 (Bates Nos. PC0400-PC0401);
- f. Posey brochure dated August 5, 2005 (Bates Nos. PC1747-PC1750);
- g. "Posey Hipsters" dated January 24, 2005 (Bates Nos. PC0404-PC0405);
- h. HipSaver website at www.hipsaver.com (Bates Nos. PC0241-PC0290 and PC0291-PC0364);
 - i. HipSaver 2003 catalog (Bates Nos. HS2 000014);
 - j. HipSaver 2004 catalog (Bates Nos. HS2 000020);
 - k. HipSaver "Open Bottom 3-Snap" flyer sheet (Bates Nos. HS2 000028);
 - l. HipSaver catalog (Bates Nos. HS2 000014);
 - m. Posey sales data (Bates Nos. PC2893-PC2904);
 - n. HipSaver sales data (Bates Nos. HS2 000325-HS00326);
 - o. Portions of the deposition testimony of Edward Goodwin of October 18, 2005 and November 30, 2005;
- p. Amended Complaint by HipSaver; and
- q. Answer and Counterclaim by Posey.

CERTIFICATE OF SERVICE

I certify that a copy of this document has been forwarded by electronic filing and USPS First Class mail today to Plaintiff's counsel of record, Edward J. Dailey, Esq., BROMBERG & SUNSTEIN, LLP, 125 Summer Street, 11th Floor, Boston, Massachusetts 02110-1618.

Dated: February 16, 2006


Donald K. Piper

ORIGINAL STUDIES

Hip Protector Compliance: A 13-Month Study on Factors and Cost in a Long-Term Care Facility

Jeffrey B. Burl, MD, CMD, James Centola, PT, Alice Bonner, APRN-BC, and Colleen Burque, PTA

Objective: To determine if a high compliance rate for wearing external hip protectors could be achieved and sustained in a long-term care population.

Study Design: A 13-month prospective study of daytime use of external hip protectors in an at-risk long-term care population.

Setting: One hundred-bed not-for-profit long-term care facility.

Participants: Thirty-eight ambulatory residents having at least 1 of 4 risk factors (osteoporosis, recent fall, positive fall screen, previous fracture).

Intervention: The rehabilitation department coordinated an implementation program. Members of the rehabilitation team met with eligible participants, primary caregivers, families, and other support staff for educational instruction and a description of the program. The rehabilitation team assumed overall

responsibility for measuring and ordering hip protectors and monitoring compliance.

Results: By the end of the third month, hip protector compliance averaged greater than 90% daily wear. The average number of falls per month in the hip protector group was 3.9 versus 1.3 in nonparticipants. Estimated total indirect staff time was 7.75 hours. The total cost of the study (hip protectors and indirect staff time) was \$6300.

Conclusions: High hip protector compliance is both feasible and sustainable in an at-risk long-term care population. Achieving high compliance requires an interdisciplinary approach with one department acting as a champion. The cost of protectors could be a barrier to widespread use. Facilities might be unable to cover the cost until the product is paid for by third-party payers. (*J Am Med Dir Assoc* 2003; 4: 245-250)

Keywords: hip protectors; compliance; falls; costs and cost analysis; long-term care facilities

Hip fractures exact a heavy financial and human toll in the United States. More than 250,000 individuals sustain a hip fracture each year. Nearly 20% of those individuals die from complications of the fracture within 1 year, another 25% seek long-term placement, and less than half fully recover.¹⁻⁸ Over \$5 billion is spent annually in direct and indirect hip fracture costs.⁹⁻¹¹

Ninety percent of hip fractures occur in individuals over the age of 70.^{12,13} Close to 2 million elderly, with a mean age

of 84 years, reside in long-term care facilities. An estimated 4 million reside in the community with similar functional and medical impairments. This population of frail, at-risk elders has the highest potential for future hip fractures.^{14,15}

Several factors that potentially increase the risk for hip fracture have been identified. They include osteoporosis, low body mass index, and, most importantly, a sideways fall onto the greater trochanter of the proximal femur.¹⁶⁻²⁰ Multidimensional programs designed to reduce hip fractures have been reported, and most include reducing falls and fall risk factors, increasing bone density and muscle strength, and improving gait and balance.²¹ However, some recent meta-analyses have reported limited statistical power to detect the effectiveness of specific strategies or programs to prevent falls and fractures.^{22,23}

Use of an external hip protection system that covers the greater trochanter of the proximal femur has been shown to reduce the incidence of hip fractures.²⁴⁻³⁰ Yet, low compli-

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ance remains a major obstacle in the effective use of hip protector systems.^{24,28,30-32} This 1-year study was undertaken to determine if moderate to high levels of hip protector compliance could be achieved and sustained in a long-term care facility.

METHODS

Subjects

Subjects were residents of The Masonic Home, a not-for-profit, 100-bed long-term care facility in Central Massachusetts. Eligible residents were ambulatory, with or without the use of an assistive device. High-risk residents were identified as having at least one of the following criteria:

1. Diagnosis of osteoporosis (T-score <2.5)
2. History of one or more falls within the past 6 months
3. History of prior fracture
4. Positive falls screen on admission for residents admitted within the previous 3 months

Fifty-six long-term care residents met the criteria for participation in the hip protector compliance study. The enrollment period was continued from September 2001 through the end of December 2001 and ran through September 2002.

Study Design

All eligible participants were invited to attend a 1-hour educational session conducted by the medical director, the director of rehabilitation, and a physical therapist. This session explained the use of hip protectors, the potential risks and benefits, and the objectives of the study. At that time, any interested individuals were invited to participate and consent was obtained. Residents who agreed to participate at the initial meeting were measured for hip protectors (see "Equipment" section). For eligible residents with a diagnosis of dementia or other cognitive impairment, families received a letter explaining the use of the hip protectors, the potential risks and benefits, and the objectives of the study. Families of those residents were given the option of having the resident participate in the study, and consent was obtained from the appropriate family member. The medical director, the director of rehabilitation, and the physical therapist were also available to answer individual questions at any time.

One-hour inservice education sessions by the rehabilitation department were provided to all licensed nursing and Certified Nurse Aide (CNA) staff on the use of hip protectors, their potential benefits, the number of protectors each resident would receive, and how and when they should be worn. Although these sessions were not mandatory, most of the nursing staff did attend. The rehabilitation department met separately with those individuals unable to attend the sessions to explain the study.

Laundry and housekeeping were inserviced separately by the director of rehabilitation on the hip protector product, and the handling and laundering instructions (no bleach). They were informed of the total number of protectors that would be circulating through the department.

Equipment

A local Massachusetts manufacturer of soft hip protectors, the HipSaver™ Company, Inc., was contracted to provide the product. They were selected based on extensive discussions of various models, including results from the PACE Program (Program for All-Inclusive Care of the Elderly) in East Boston, which had successfully used this hip protector model for over 2 years.³³ The Hip Saver Company in Canton, Massachusetts, was also selected because of close proximity to the study site and the ability to provide comprehensive customer service.

The hip protector company provided inservice education to the department of rehabilitation on measuring residents for proper size, ordering, and laundering requirements. They also provided a sizing chart, and all subjects were subsequently measured and fitted by the rehabilitation department for the proper-sized protector (there were 4 possible sizes). A measurement was performed around the widest circumference of the pelvic region.

After discussions with the nursing, rehabilitation, and laundry departments, it was determined that 4 sets of protectors would be dispensed to each resident to ensure that a hip protector would be available when needed. The rehabilitation staff was responsible for ordering the protectors and marking them with the resident's name before distribution. The nursing staff was responsible for distribution and storage on the nursing units. The cost of each hip protector, at the beginning of the study, was \$30.

Tracking Compliance

For the purposes of this study, any individual who wore the hip protector at least once and was able to be monitored for a minimum of 9 months was included. It was felt that a longitudinal follow up was essential to determine if consistent wearing of the hip protectors could be maintained over time. Only daytime hip protector use was evaluated (ie, use from the time the resident was dressed in the morning until they were in bed for that night). Nursing staff received the protectors and distributed them to the appropriate residents. Those with activities of daily living deficits were given reminders by the CNAs and staff assistance in donning the protectors when needed.

Percent compliance was measured monthly by dividing the total days hip protectors were worn by the number of days in the month. Nursing tracked daily compliance on a log created and kept in the medication administration record (MAR) on the medication cart. At the time of the medication pass, the CNA reported to the nurse whether the resident had worn the hip protector for that day. The nurse noted this in the study log. Nursing was interviewed monthly by a representative from the rehabilitation department to obtain ongoing compliance data in the study subjects. The rehabilitation department reviewed the monthly tracking record and recorded monthly compliance for each resident. Compliance data was recorded for a total of 13 months.

Table 1. Demographic Characteristics

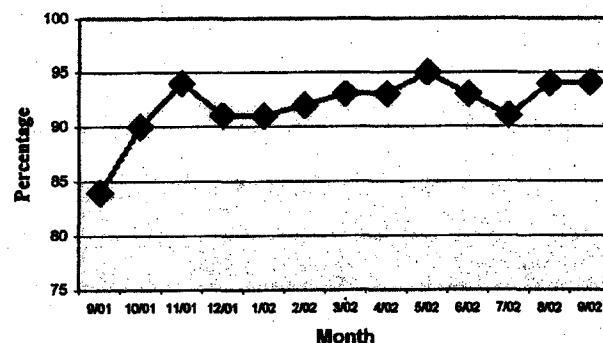
Characteristic	N/%
Average age (y)	89
Mode	93
Percent female	75%
Medicare	86%
Medicaid	92%
1 risk factor	39%
2≥ risk factors	61%

RESULTS

Fifty-six long-term care residents met the inclusion criteria for the study. Five residents agreed to participate when initially approached by the medical director, but refused to be measured and were not issued the hip protectors. These residents were not considered to be in the study. Six residents died, and an additional 7 had a significant change in condition to nonambulatory status well before the 9-month minimum could be completed. These 2 subgroups were not included in the data. Thirty-eight residents completed at least 9 months of the 13-month trial, with a mean follow up of 11.9 months. Data was collected on a total of 38 residents.

The average age of study participants was 89.5 years, with a mode of 93 years. Seventy-five percent of the participants were women, and 78% had a primary diagnosis of dementia. Ninety-two percent of participants were on state medical assistance (Medicaid) and 86% had Medicare coverage for part A expenses. More than half of the participants had 2 or more risk factors, and approximately one third had only one risk factor (Table 1). The total number of medications per resident did not change significantly during the study. The total scheduled psychoactive medications averaged one medication per participant (Table 2).

During the 13-month study period, a total of 206 falls occurred in the facility, averaging 15.8 falls per month or approximately 1.5 falls per resident per year. One hundred twenty-six of the falls (61%) involved 34 of the 38 study participants, or one-third of the total 100-bed nursing facility population (average occupancy, 98.9). Mean number of falls per participant was 3.9, compared with 1.3 falls for those not in the study. There were 2 hip fractures in the facility in the year before the start of the study. There were no hip fractures in the facility during the 13-month intervention. There were 5 non-hip fractures during the study, 2 fractures (clavicle,

**Fig. 1. Percent hip protector compliance from September 2001 through September 2002.**

humerus) in 1 individual. Three of the 4 individuals who sustained a non-hip fracture were in the study group. Two subjects sustained fractures during the night (pelvis, rib) when they were not scheduled to wear the hip protectors. The other subject sustained a forearm fracture from a fall. She was wearing hip protectors at the time of the fall. By the third month of the study, average compliance exceeded 90%, and this was sustained for the remainder of the study (Fig. 1).

CNAs were interviewed by the rehabilitation staff in cases of noncompliance and were asked why hip protectors were not being worn. Most often, CNAs reported that the individuals were not wearing the hip protectors because of acute illness (not expected to get out of bed that day) or possibly as a result of laundry issues (occasional difficulty getting protectors back from laundry on Mondays, according to CNAs). Another reason given was that the resident was going out to see a specialist (medical or surgical), where the use of hip protectors was felt to be an added burden during the appointment. By the third month of the study, residents (those not requiring help with activities of daily living) appeared to consider the protectors part of their daily dressing routine and, for the most part, only required minimal cues from CNAs. Two participants wore hip protectors regularly for the first month of the study, but reported that they were not comfortable. Despite size changes, these subjects elected not to continue the hip protectors but were counted in the compliance data.

Staff time spent in the initial phase of the study on educational sessions for the residents and staff was 7.75 hours, for an estimated indirect cost of approximately \$500. Total cost for the hip protectors for the 49 participants who agreed to be measured was \$5880, for a total direct and indirect cost of \$6300 for the study. None of the 6 deaths were related to a fall, and were not related to the use of hip protectors. The average time that hip protectors were worn by the 7 subjects who had a change in condition was 1.8 months (range, 1–4 mo). Average compliance for this group was 55% (range, 35–75%). The average time that hip protectors were worn by the 6 subjects who died was 3 months (range, 0–7 mo). The average compliance was 93% (range, 67–100%).

Table 2. Prestudy and Poststudy Average Medications

Average Medications Per Participant Per Day	Start of Study	End of Study	Paired t-test	P Value
Total medications	7.75	8.06	-.551	.59
Cardiac medications	1.14	1.17	-.177	.86
Total psychoactives	0.94	1.08	-.154	.13
Antidepressants	0.47	0.53	-.81	.42
Antipsychotics	0.22	0.25	-.143	.16

DISCUSSION

The incidence of hip fractures is expected to significantly outpace the growth of the senior population in the coming years. Between 1970 and 1997, the Finnish population over age 50 increased by 53%, whereas hip fracture incidence increased by more than 169%.³⁴ The total number of hip fractures worldwide is predicted to more than quadruple from 1.6 million to more than 6.2 million by 2050 if nothing is done to prevent this potential health crisis.³⁴

Although the incidence of falls in long-term care is 1.5 falls per bed per year,^{24,35,36} only 1–2% of all falls result in a hip fracture.^{37,38} Studies have shown that the major causal factor for hip fracture is an impact to the greater trochanter, in which the impact energy of a fall exceeds the average fracture threshold of the proximal femur.^{16–20} In addition, studies have demonstrated that osteoporosis, low body mass index, and height of a fall are independent risk factors for hip fracture.^{16–20}

Successfully reducing hip fracture rates requires an interdisciplinary process in which all risk factors are addressed. To date, efforts to reduce falls, improve gait and balance, and increase body mass index have met with only partial success. Treatment of osteoporosis with antiresorptive medications might only increase femoral neck density by 2% per year,³⁹ which might not be sufficient for fracture reduction in long-term care residents whose average life expectancy is approximately 24 months.¹⁵ One preventive strategy that could potentially reduce the impact energy of a fall to the greater trochanter is the use of external hip protectors, an external padding system that both absorbs and shunts energy away from the proximal femur. Studies have demonstrated the effectiveness of hip protectors, with one estimate that hip fractures could be reduced by 60% in those wearing the device, and up to 80% if all residents wore the protectors.²⁸

Two recent studies have questioned the efficacy of hip protectors. In a randomized, controlled trial with 18 months of follow up, Meyer showed a relative reduction in hip fracture of more than 40%, but at borderline significance.³⁰ van Schoor randomized a mixed group of community-dwelling elderly and nursing facility residents in a 16-month study.⁴⁰ No statistical difference between the control and study groups was realized. However, the authors noted a 23% nonsignificant reduction in hip fractures in individuals who wore the hip pads, as well as a lower fracture rate per fall in the study group.⁴¹

The definition of compliance is not standardized, making comparisons between studies problematic. Several studies report compliance only at the time of a fall, as opposed to reporting total number of days of fracture protection per patient. Lauritzen et al. base their compliance reporting on fall registers, ie, the number of times the resident was wearing the hip protectors at the time of the fall with a compliance rate of 24%.²⁴ Two other studies using similar compliance measures had rates of 46%, and 54%, respectively.^{25,30} Harada, using a case-controlled observation method, noted a compliance rate for complete and incomplete wear in 88 subjects of 70% and 17%, respectively.²⁶ van Schoor, using a

self-reporting mechanism, found compliance of 45% at 6 months and 37% at the end of 12 months.⁴⁰

The reasons for low compliance in these studies are not described in detail; however, study design could be one factor. Individuals are often asked to wear hip protectors without the staff having had detailed education regarding their use. Thus, lack of staff understanding and support could have been a factor in some studies. Hip protectors are most likely to be of benefit with maximum daily wear. Based on Parkkari's framework,⁴¹ a structured educational program for both staff and patients was instituted in this study. The intent was to have staff support and encourage the use of the hip protectors. In addition, the concept of daily wear count was used in determining compliance. Each day the CNA provided feedback on hip protector wear, which was documented in the MAR. This was felt to be a more accurate assessment of total hip protector wear and fracture prevention. In our study, residents with a significant change in condition or decline in functional status had lower compliance than the other subjects (55%). One explanation for the low compliance in this group is that when patients become acutely ill, staff determines other care issues to be of higher priority. Also, when patients spend more time in bed, for example when acutely ill, CNAs might elect not to use hip pads. This specific topic might require dedicated inservice education.

Based on the results of this study, it appears that relatively high compliance is feasible and potentially sustainable in a long-term care facility. Compliance after the third month did not drop below 90%. This could have been attributable in large part to the rehabilitation department's role as a champion as well as the formal educational component of the study. There were 2 individuals included in the compliance who could not wear the hip protectors as a result of poor fit. Despite repeated attempts to optimize fit, the individuals complained of discomfort. If we exclude these 2 subjects from the data, average daily compliance exceeded 95%.

Failure to achieve higher compliance in the first 3 months could have been the result, at least in part, of issues with laundering of the protectors. Because of limited laundering on the weekends, especially for the incontinent residents who needed frequent changes, clean hip protectors might not have always been available on Monday mornings. This was resolved by providing those residents with 2 additional sets of protectors. One positive finding was that CNAs who had received the educational session would often call the rehabilitation department to obtain hip protectors before getting residents out of bed, if none were available in the patient's room. The CNAs reported occasionally borrowing unused/unopened hip protectors from other residents in an emergency, rather than getting a resident out of bed without them. For continent residents, 3 sets of hip protectors might be sufficient. However, incontinent residents might need more than 4, depending on the frequency of laundry services. Previous studies have not always reported the number of pads dispensed per resident. In some studies, only 2 or 3 protectors per resident were used. It is possible that the higher compli-

ance rate in this study was, in part, related to the relatively high number of pads dispensed to each resident.

Kannus estimated that 42 individuals would need to be treated for 1 year to prevent one hip fracture.²⁸ Given the compliance and number of users in the current study, approximately 1–2 hip fractures per year could be prevented. This could represent a potential cost savings to Medicare of approximately \$20–40,000 (Fallon Community Health Plan, unpublished data).^{11,42}

One major barrier to the use of hip protectors is the cost of the product. Until Medicare and Medicare + Choice programs provide external hip protectors as a covered benefit, either facilities or residents/families will be responsible for purchasing the protectors. Given the current budget crisis in many states, long-term care facilities are likely to face reductions in per diem rates. As of March 1, 2003, Massachusetts has reduced Medicaid payments to nursing facilities by over 2%, with possible further reductions. Facilities are faced with trying to maintain quality of care despite decreased revenue, and might be less likely to offer hip protectors to high-risk residents, unless they perceive some indirect benefits to the facility as well as to the resident. Some of those indirect benefits might include improved facility quality ratings, fewer reports of hip fractures to state authorities, and improved state survey results with regard to fall prevention. As more studies demonstrate the effectiveness of external hip protectors in preventing hip fractures in targeted populations, state or federal regulations might change to require hip protectors for certain high-risk, long-term care residents.

CONCLUSION

High compliance rates for hip protectors in an at-risk, long-term care population are feasible. Success depends in part on whether there is broad-based acceptance by support staff, especially CNAs, who can make the hip protectors an integral part of the daily routine for each resident. The process also requires a champion, a person or team, to assume accountability not only for measuring compliance, but also for attending to small details such as measuring, ordering, marking, and storing the hip protectors. In this study, the department of rehabilitation provided the leadership and accountability to sustain the program. Elder advocates and lobbyists need to inform federal and state governments of the potential benefits of hip protectors. Pending further research, insurers should be encouraged to provide them as a covered benefit to targeted, high-risk patients.

ACKNOWLEDGMENTS

The authors thank Maria Barretti for her time spent typing the article and Dr. Jim Fain for his assistance with the statistical methods used in the results. We also want to acknowledge both the encouragement and support of the board of directors of The Masonic Health Care Systems, without which we would not have a successful hip protector program.

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EXHIBIT 29

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

THE HIPSAVER COMPANY, INC.,

Plaintiff,

v.

C.V. NO. 05-10917 PBS

J.T. POSEY COMPANY, INC.,

Defendant.

J.T. POSEY COMPANY, INC.,

Plaintiff,

v.

THE HIPSAVER COMPANY, INC.,

Defendant.

**SUPPLEMENTAL RULE 26(a) REPORT
PREPARED BY GARY REICH**

Subject to Protective Order: Attorneys' Eyes Only

I. Preliminary Statement

I have been asked to render a supplemental opinion with respect to the following: Assuming the advertisement attached as Exhibit 1 had been published for the entire period from 2001 through 2005, what portion of Posey's sales of hip protectors would have been due to the highlighted statements in the advertisement?

II. Supplemental Opinions

Supplemental Opinion:

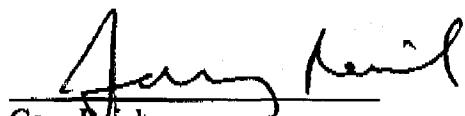
In my prior report, I concluded that there is no basis to conclude that the Garwood Laboratories advertising had any effect on HipSavers sales or Posey sales, and that it would be total speculation to state otherwise. Posey's target customers are typically sophisticated consumers who will consider several factors, such as cost, comfortability, penetration of the market, quality, acceptance among the customer peers, and reputation of the company.

Since issuing that initial report, I have been provided with Posey Hipsters Advertisement PC0400 and PC 0401, a copy of which is attached. My initial opinion was limited to the effect of the Garwood portion of the attached advertisement that may have had upon Posey's sales. I have been asked to state a supplemental opinion as to the effect of the Garwood study in conjunction with the highlighted statements, "Posey Hipsters Help Protect Against Injury From Falls", and "The Hipsters high energy-absorbing foam pads are positioned precisely over the hip bones, increasing the odds of surviving a fall uninjured", in the advertisement that would have had an effect on Posey's sales of Hip Protectors.

For reasons as set forth in the original report and these supplements, my opinion is the same. It is difficult to estimate how much the buying decision might be influenced, if any, by this specific advertisement. Usually, with a product of this type, a company creates awareness about it through multiple channels; such as demonstrations at trade shows, distributors, direct mail, catalogs, and print advertising. The type of customer for this product, such as nurses, geriatric care case managers, or long-term care administrators would not buy only from seeing the advertisement. Instead, they might buy it, after becoming aware of the product from multiple sources, and confirming that their peers are also satisfied with the product.

III. Exhibits/Demonstratives

I expect to use this report and my prior report and their attached exhibits in support of any testimony that may be offered at trial. However, a final determination of the documents and exhibits that may be used at trial has not been made. I may use additional demonstrative exhibits at trial and they will be provided in accordance with a schedule provided by the Court.



Gary Reich

10/17/06

Date

Subject to Protective Order: Attorneys' Eyes Only

3

Clinical References Supporting the Use of Hip Protectors

Title: *External Hip Protectors to Prevent Osteoporotic Hip Fractures*Author: A. Ekman, H. Malmijn, K. Michaelsson, S. Ljunghall
Publication: The Lancet, volume 350, August 23, 1997

Study Objective: Ekman and colleagues conducted a controlled study on the use of hip protection to prevent hip fractures. One expectation was to either confirm or disprove the 1993 reported findings of J.B. Lauritsen and colleagues in "Effect of external hip protectors on hip fractures."

Results: The use of hip protectors as preventative treatment for hip fractures was validated. "Our study confirms a reduced risk for hip fractures of the same magnitude as the previous report."

Recommendations: "With improved compliance, external hip protectors should be an effective prophylactic against hip fractures."

Title: *Prevention Of Hip Fracture In Elderly People*Author: Pekka Kannus, M.D., Ph.D., et al
Publication: The New England Journal of Medicine, Vol. 343, No. 21, November 21, 2000

Study Objective: The purpose of this study was "to determine whether an external hip protector would be effective in preventing hip fractures among elderly adults." The study population was comprised of elderly adults from 22 community based health-care centers in Finland; a treatment group of 653 and a control group of 1,148 participants.

Results: The degree of compliance with the hip protector was 48 ± 29%. The hip protector group suffered 13 hip fractures, 9 of which occurred while not wearing the hip protector, compared to 67 hip fractures in the control group.

Recommendations: "We conclude that the risk of hip fractures can be reduced in frail elderly adults through the use of an anatomically designed external hip protector. Only 41 persons need to use the hip protectors for one year (or 8 persons, for five years) in order for one fracture to be prevented."¹

Posey Hipsters can be washed according to CDC guidelines for soiled linen. Hipsters with high durability pads are designed to withstand laundering in large capacity machines at higher temperature hot (180°) washing and high temperature drying cycles.

Due to the random possibility of falls, the Posey Company makes no guarantee, express or implied, that the user is protected from hip trauma.

Please detach and fax to 1-800-443-5014, or call us at 1-800-443-POSEY to start your trial

Name			
Title			
Institution			
Address			
City	State	Zip	
Telephone ()	Area code is ()	am	pm

J.T. Posey Company
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5635 Peck Road
Arcadia, CA 91006-0230 USA
Fax 626-443-5014
www.posey.com
M0709 050005



Fax or mail to:

Posey®
FIRST IN FALL PREVENTION



YES!

I want to take advantage of your 30-day trial offer. Please have a representative call me to discuss Posey Hipsters.



PC 0400

